

Summary of Amendments to the Massachusetts Minimum Wage Regulations

Effective April 25, 2003

In September of 2001, the Division of Occupational Safety (DOS) established the Minimum Wage Program. The program was designed to oversee the issuance of minimum wage waivers and formal opinion letters interpreting the Massachusetts Minimum Fair Wage Law, G.L. c. 151, and Regulations, 455 C.M.R. §2.00 et seq.

In the ensuing year, DOS saw a significant increase in the number of inquiries from employers and employees about the meaning and interpretation of the then-existing Minimum Wage Regulations. These inquiries revealed significant gaps in the regulations and indicated that several regulatory provisions, such as those governing wage deductions, were in need of clarification. This agency also came to the conclusion that the regulations should be brought in line with analogous federal law in several key areas.

On November 18, 2002, DOS issued proposed amendments to the Minimum Wage Regulations. Following public notice, two public hearings were held. The first hearing was held on January 6, 2003, in Boston, and the second hearing was held on January 9, 2003, in Springfield. Written comments were also received until January 16, 2003.

The following is a summary of the final Minimum Wage Regulations, effective April 25, 2003: (For your convenience, all changes made from the November 18, 2002 proposed regulations are summarized at the end of this document.)

Substantive Amendments

2.01: Definitions

Regular Hourly Rate: The phrase “other than a bona fide executive, administrator or professional” has been replaced with “other than an employee exempt from overtime under M.G.L. c. 151, §1A.” The “executive, administrative, and professional” exemption is only one of 20 exemptions under the state overtime law and the regulation has been amended to reflect that fact.

The last sentence has been deleted and a new sentence inserted that: 1) retains the statutory exclusion of commissions, bonuses, and other incentive pay required by statute, and 2) adds in the exclusion of other sums delineated under the Fair Labor Standards Act, (FLSA), commonly known as the “7(e) exclusions.”

This change fills a significant gap in the regulations. In the past, there was little direct regulatory guidance as to what was considered part of the regular hourly rate for purposes of overtime calculation. For example, were travel reimbursements included in the regular hourly rate? Since travel reimbursements are explicitly excluded under 29 U.S.C. §207(e)(2)), it is now clear that such reimbursements are excluded from the regular hourly rate under state law as well.

Uniform: A sentence has been added to clarify that clothing requirements that are more in the nature of a “dress code” are not considered uniforms.

2.02: Basic Minimum Wage and Overtime Rates

The new sub-section 2.02(3) consolidates two definitions for overtime rates(s) that appeared in the former sub-sections 2.02(4) and 2.03(3). Additionally, language has been added that ties the state’s “executive, administrative, and professional” exemption to the analogous federal exemption.

2.03: Hours Worked

The former “on-call” provision, sub-section 2.03(1)(b), governed on-call time at the work site, with a special provision that dealt with on-call time at “night.” This sub-section was somewhat dated as it did not specifically address on-call time away from the work site (i.e. on pagers/cellphones) which has become far more common, and it assumed day shifts are the norm, which is not always the case.

The new sub-section addresses on-call time off the work site (in the new sub-section, 2.03(2)), and addresses “sleep time” and 24/7 work shifts at the work site (in the new sub-section 2.03(3)), thereby bringing state law in line with analogous federal law in this area. The latter is the one major aspect of “hours worked” where Massachusetts has differed significantly from federal law, and, in the past, was confusing for employers and employees alike.

The former travel time sub-section 2.03(2) has been re-written to address specifically home-to-work time. Compensation for travel time from a regular work site to an alternate location has also been clarified. The words “at the same rate as for working time” have been deleted. Overnight travel away from home is now consistent with analogous federal law in this area.

2.04: Wage Payments and Deductions From Wages

The former sub-section 2.03(4) governing wage deductions caused a fair amount of confusion. The new Section 2.04 aims to clarify this area of the law.

The former introductory sentence has been changed to clarify that only allowable meals and lodging deductions delineated in (a) and (b) can be deducted from, and thereby be considered part of, the basic minimum wage. References to wages in sub-sections (a) and (b) have been changed to reference the basic minimum wage.

In 455 C.M.R. §2.04(1)(a), allowable lodging deduction have been increased to: \$35.00 per week for a room occupied by one person; \$30.00 per week for a room occupied by two persons; and \$25.00 per week for a room occupied by three or more persons.

In 455 C.M.R. §2.04(1)(b), allowable meals deductions have been increased to: Breakfast, \$1.50; Lunch \$2.25; and Dinner \$2.25. However, no deduction for meals may exceed the actual cost to the employer of providing the meal.

The former sub-section 2.03(4)(c)(1) governing uniform deductions has been moved to the next sub-section, 2.04(3). (See discussion below.) The former sub-section 2.03(4)(c)(2), new sub-section 2.04(2)(a), has been re-written to reflect DOS's current interpretation of uniform maintenance costs and its effect on minimum wage. This new sub-section parallels federal treatment of this area.

A new sub-section 2.04(3) restates the former sub-section 2.03(4)(c)(1) and clarifies that deductions for meals, lodging, and uniforms may not alter an employee's regular hourly rate for the purposes of overtime calculation. This sub-section is also consistent with analogous federal law.

2.05: Employer Licenses

This section reorganizes the former sub-sections 2.03(5),(6) & (7) which govern employer licenses to pay sub-minimum wage. The former sections were confusing and, at times, overlapping. This amendment and reorganization of this section brings the regulation in line with the statute.

The various student worker licenses have been put together under one heading. (The former sub-section 2.03(5) permitted issuance of a license to the "learner or apprentice." This was changed to the employer of the learner or apprentice, to be consistent with statutory authority under G.L. c. 151, §9.) Summer camps are addressed in a separate provision, and references to training programs in educational institutions have been eliminated as they are already excluded from the definition of "occupation" under G.L. c. 151, §2. The word "handicapped" has been replaced with "disabled."

2.06: Notice and Recordkeeping

The record-keeping section, 455 C.M.R. §2.06(2), has been amended to include reference to other statutory record-keeping requirements found in M.G.L. c. 151, §§3 and 19(3). The section has also

been amended to require employers to record the dates on which employees worked, and the sub-section also clarifies the meaning of “transcript” in M.G.L. c. 151, §§3, 15, and 19(3).

A new sub-section 2.06(3) permits rounding practices in the recording of hours worked.

Other Minor Technical Amendments

2.01: Definitions

Tipped Employee: The change of “Service” to “Tipped” employee is more in the nature of a technical amendment.

Working Time: The term “workplace” has been changed to “work site” to be consistent with other regulatory provisions.

2.02: Basic Minimum Wage and Overtime Rates

Sub-section 2.02(1) has been given a title (“Basic Minimum Wage”) to make it consistent with the other sub-sections within Section 2.02. Specific references to amounts have been eliminated in the amendment so that it is no longer necessary to promulgate a new regulation each time the statute is amended to change the minimum wage.

Sub-section 2.02(2), “Learner or Apprentice Rate,” has been eliminated as duplicative. The 80 percent rate is already included in the Student Learner License provision.

The new sub-section 2.02(2) is the former sub-section 2.02(3), “Service Rate.” Minor changes have been made: 1) the term “tipped employee” replaces “employees receiving more than \$20 per month in tips,” as tipped employees are already defined in sub-section 2.01; 2) sub-section 2.02(3)(b)(1) has been changed to reference the third, not the second paragraph of G.L. c. 151, §7; and 3) sub-sections 2.02(3)(b) and 2.02(3)(b)(2) were amended to read equals or exceeds the basic minimum wage.

2.03: Hours Worked

(1) The title of “Minimum Daily Hours” has been changed to “Reporting Pay.” The change in language reflects the current DOS interpretation of this provision.

2.04: Wage Payments and Deductions From Wages

The word “luncheon” has been changed to “lunch” in the current sub-section 2.03(4)(b), which is the new sub-section 2.04(1)(b).

2.06: Notice and Recordkeeping

Sub-section (1), “Workplace Notice,” (formerly sub-section 2.03(8)), eliminates the words “available from the Office of the Attorney General.” The regulation still requires employers to post the Notice issued by the Commonwealth.

Changes From 11/18/02 Proposed Amendments

1. The proposed sub-section 455 C.M.R. §2.02(4) has been deleted.
2. In 455 C.M.R. §2.03(4)(b), the term “work shift” has been changed back to its current form, “work day.”
3. In 455 C.M.R. §2.04(1)(a), the allowable lodging deductions have been increased to: \$35.00 per week for a room occupied by one person; \$30.00 per week for a room occupied by two persons; and \$25.00 per week for a room occupied by three or more persons.
4. In 455 C.M.R. §2.04(1)(b), the allowable meals deductions have been increased to: Breakfast, \$1.50; Lunch \$2.25; and Dinner \$2.25. However, no deduction for meals may exceed the actual cost to the employer of providing the meal.
5. The workplace notice section, 455 C.M.R. §2.06(1), has been clarified to make it clear that employers must post the workplace notice issued by the commonwealth.
6. The record-keeping section, 455 C.M.R. §2.06(2), has been amended to include reference to other statutory record-keeping requirements found in M.G.L. c. 151, §§3 and 19(3). The section has also been amended to require employers to record the dates on which employees worked, and the section also clarifies the meaning of “transcript” in M.G.L. c. 151, §§3, 15, and 19(3).